

Appl. No. 09/446,550
Atty. Docket No. CM-1519Q
Amtd Dated April 26, 2005
Reply to Office Action of January 26, 2005

5

REMARKS/ARGUMENTS

Rejections Under 35 USC § 103(a)

The Office Action maintains the rejection of Claims 1–14 under 35 USC § 103(a) as being unpatentable over Dobrin (US 5,628,737) in view of Tapp (US 5,169,712)¹. The Office Action admits that the Dobrin patent fails to disclose the use of a particulate filler material embedded in a polymeric film layer and asserts that the patent discloses all other aspects of the invention. Specifically, the Office action states that:

- The Dobrin patent discloses an absorbent article 20 (Figure 2) comprising a core region 74 and a chassis region 76 surrounding the core region.
- The article 20 is said to also comprise a laminate 95 which extends into both the core region and the chassis region to form a core backsheet and a chassis backsheet. The laminate 95 is said to comprise a polymeric film layer 26 (col. 6, lines 42–43) and a fibrous layer 90 (col. 9, lines 51–52). The laminate 95 is said to also comprise apertures 84 in the chassis region 76. The Office Action asserts that the apertures 84 give the chassis region 76 a higher degree of breathability than the core region 74, hence the MVTR in the core region 74 is asserted to be lower than the MVTR in the chassis region 76.

The Office Action goes on to state that the Tapp reference discloses a breathable laminate comprising a polymeric film layer and a fibrous layer (col. 4, lines 39–42, 60 and 61). The polymeric film layer is said to: 1) have a basis weight greater than 25 gsm (col. 16, lines 29–32), 2) comprise a polymeric matrix and a particulate filler material (col. 6, lines 65–68) and 3) enhance breathability by the formation of cracks around the particulate filler material (col. 13, lines 15–18). The Office Action goes on to conclude that it would have been obvious to construct the laminate of Dobrin using the polymeric film layer of Tapp to increase breathability of the laminate.

Responding to the Applicants' argument that Tapp fails to disclose the cracks around the filler material as being formed by passing the laminate through the nip between a roll pair where the roll pair comprises engaging ridges and grooves, the Office Action states that Claim 1 is drawn to an article of manufacture and that the determination of patentability is based on the article itself regardless of the method of manufacture. The Office Action then

¹ US 5,628,737 issued to Dobrin, et al. (not Tapp) on May 13, 1997. It is the primary reference cited in the Office Action. US 5,169,712 was issued to Tapp (not Jameson) on December 8, 1992 and has been previously cited in this case.

Appl. No. 09/446,550
Atty. Docket No. CM-1519Q
Amdt Dated April 26, 2005
Reply to Office Action of January 26, 2005

6

goes on to assert that the Tapp reference discloses all the claimed structural features of the filled film and that the modification of Dobrin in view of Tapp therefore fulfills the limitations of the claim.

In response, the Applicants respectfully traverse the rejection and direct the Examiner to Claim 1 as amended in Paper No. 20. The Applicants again submit that, contrary to the assertions of the Office Action, an article combining the teachings of the Dobrin, *et al.* patent and the Tapp reference fails to establish a *prima facie* case of obviousness because the combination fails to teach or suggest all of the limitations of Claim 1 as amended (MPEP § 2143.03). Specifically, the combination fails to teach or suggest a structure where the breathability is provided by cracks formed around particulate filler material, where at least a portion of the cracks are formed using an activation process where the laminate is passed through at least one roll pair, where the roll pair comprises engaging ridges and grooves which provides a multiplicity of corrugations to at least a portion of said laminate as described in Claim 1 as amended because *passage through a roll pair results in a structurally different pattern of cracks than would be obtained using the longitudinal stretching (i. e. a speed difference between roll pairs) or tentering as taught in the Tapp reference.*

- The Applicants submit that Tapp's stretching regimen would result in a substantially overall isotropic pattern of cracks because the amount of stretching is essentially the same in any given part of the web as it is being stretched using either of the longitudinal or tentering means that are taught by the reference. As previously noted in the response mailed on November 11, 2004, the embossing step of the Tapp reference discussed at col. 25 thereof fails to provide any crack formation.
- Conversely, the Applicants submit that a laminate according to the present invention would have a striated pattern of greater and lesser crack density due to the ridges and grooves of the roll pair. As support, the Applicants direct the Examiner to page 12, lines 1-12 of the present application and to Fig. 3 thereof. As can be seen therein, a portion of web 201 is essentially isolated so there is little, if any, web movement in a lateral direction at corners 238 as it passes through rolls 211 and 212 (The Applicants also direct the Examiner to page 13, lines 1-5 which discusses treating the roll surface in order to prevent web slippage). Given that the web is isolated adjacent to corners 238 and that the web is stretched as it moves through the roll pair, the Applicants submit that such a process will result in a striated pattern of higher and lower density of crack formation.

Appl. No. 09/446,550
Atty. Docket No. CM-1519Q
Amdt Dated April 26, 2005
Reply to Office Action of January 26, 2005

7


Thus, contrary to the assertion in the Office Action, there is a structural difference in the film portion of a laminate according to the present application compared to the film portion of any laminate that may be produced according to the cited combination of references and the Office Action has failed to establish a *prima facie* case of obviousness with respect to Claim 1 as amended. Therefore, given also that Claims 2-14 depend from Claim 1 having all the limitations of the base claim, the Applicants respectfully request reconsideration of the rejection of Claims 1-14 under 35 USC § 103 over Dobrin in view of Tapp, the withdrawal thereof and that Claims 1-14 be allowed.

SUMMARY

All of the rejections in the Office Action have been discussed as have the distinctions between the cited references and the claimed invention. In light of the discussions contained herein, the Applicants respectfully request reconsideration of the rejections, their withdrawal, and allowance of all of the claims. Issuance of a Notice of Allowance at an early date is earnestly solicited.

Respectfully submitted,

For: Olaf Isele, et al.

By 
Edward J. Milbrada
Agent for Applicant(s)
Registration No. 40,090
(513) 634-1168

Date: April 26, 2005

Customer No. 27752